for expenses. A total of US$43,987 was paid in and taken out. This sum represented the various amounts in the charges.

The prosecution introduced in evidence after a trial within a trial as to their voluntariness, two statements recorded from the appellant under the provisions of section 15 of the Act. The appellant did not deny the receipt of the money but contended that it was for Group Captain Mohd. Taib of the RMAF who had asked him to demand a share of the commission from the Company and that he had throughout acted as the agent of Group Captain Mohd. Taib and that he had paid over to him whatever money he had received.

In consequence of this line of defence, the prosecution called Group Captain Mohd. Taib to give evidence. He denied everything that the appellant accused him of. He had nothing to do with the selection or rejection of the aircraft. He was not a member either of the evaluation or the negotiations teams. He as a flying man had very little to do with the appellant in the course of his duties except that when he was acting as Chief of the Air Staff and had found the appellant dilatory in his work, he did indicate to him that he should resign.

In his defence, the appellant continued to put all the blame on Group Captain Mohd. Taib.

At his appeal before us, his counsel based his entire argument on an attack on the learned judge's acceptance of Group Captain Mohd. Taib's evidence. He acknowledged, when asked, that he was appealing on facts which the learned judge had found having heard and seen the witnesses in the witness box and after examining the documentary evidence. But he stoutly maintained that this evidence was untrue because it just was not reasonable. We are however satisfied that he had made the same representations to the learned judge, who had considered them and who had on the totality of the evidence combined with his personal assessment of the witness's reliability from seeing him in the witness box come to the findings he did make. Under such circumstances, where the findings depend on an assessment of the credibility and reliability of a witness, it is not the practice of this court sitting on appeal to refuse to accept them.

But in this particular case, our reluctance to differ from the learned judge is all the firmer because even if we accept (which we do not) the contention of the appellant that Group Captain Mohd. Taib was an untruthful witness and that it was true and a fact that he had solicited and accepted the illegal gratification as an agent for him, he is just as guilty since section 4 of the Act provides that the offence is committed by someone who solicits or receives or agrees to receive the illegal gratification for another. That is clear beyond argument from the wording of this section 4:

"4. If —

(a) any agent corruptly accepts or obtains, or agrees *to accept* or attempts to obtain, from any person, *for himself or for any other person,* any gratification as an inducement or reward for doing or forbearing to do, or for having after the coming into operation of this Act done or forborne to do, any act in relation to his principal's affairs or business, or for showing or forbearing to show favour or disfavour to any person in relation to his principal's affairs or business;"

It might be that the charges would have to be amended if the court accepted the defence version; but the defence at the trial court and on appeal never seriously challenged the guilt of the appellant. However, in the final analysis, no reason exists to disturb the High Court's findings of fact or the conviction.

As for the sentences, we agreed with the learned judge's opinion that the sentences imposed by him erred on the side of leniency. We do not however propose to disturb them.

The appeal was dismissed.

Appeal dismissed.

Solicitors: *Suleiman Alias & Nava.*

GILLESPIE BROS. & CO. v. NGUI MUI KHIN & ANOR.

[O.C.J. (Syed Othman F.J.) September 3, 1978]
[Johore Bahru — Civil Suit No. 174 of 1976]

Contract — Agreement to finance company in course of business in relation to bills and orders — Guarantee for payment of outstanding sums — Whether transaction a money-lending transaction — Moneylenders Ordinance, 1951.

The plaintiffs a United Kingdom company had agreed to finance a company in Singapore in the course of its business in respect of bills and orders. The defendants agreed to guarantee payment of outstanding amounts. The plaintiffs sued the defendants for the outstanding amount and obtained summary judgment. The defendants appealed and on the appeal it was argued that there was a triable issue as to whether the transactions were moneylending transactions.

Held: the Moneylenders Ordinance relates only to pure money transactions. It did not apply to the transactions in this case, which was in essence the grant of credit facilities subject to payment of interest on the price of goods.

Case referred to:-

(1) *Victor Kee Yong Poey* v. *Diners Club Malaya Sdn. Bhd.* [1976] 2 M.L.J. 30.

CIVIL SUIT.

T.S. Chung for the appellants.

N. Jegathesan for the respondents.

Cur. Adv. Vult.

Syed Othman F.J.: The only issue which has been agreed upon by the parties to be determined in this appeal is whether the transaction entered into between the parties is a moneylending transaction.

The appeal is against the decision of the Senior Assistant Registrar on January 11, 1978 when she allowed the plaintiffs to sign final judgment against the defendants for the sum of $84,560.76 together with interest at the rate of 8.75% from June 3, 1975 to the date of judgment and further interest on the decretal sum at the rate of 6% from the date of judgment to the date of realisation. She also ordered the defendants to pay costs.

It is common ground the plaintiffs are not registered moneylenders under the Moneylenders Ordinance, 1951 and that all the transactions were outside the country.

For the purpose of determining the point that has been raised, I think it is necessary to recapitulate the plaintiffs' claim as appearing in the amended statement of claim on which the plaintiffs rely for their application for final judgment. The claim may be put as follows: The plaintiffs are a company incorporated in the United Kingdom; by a contract entered into between the plaintiffs and Southern Equipment Suppliers (Singapore) Pte. Ltd. (hereinafter referred to as Southern Equipment), a company incorporated in Singapore, the plaintiffs agreed on terms and conditions to finance the company in the course of its business to an amount of £30,000 in bills and orders standing at any one time; in consideration of this agreement Southern Equipment in the course of its business agreed to, *inter alia*,

(a) pay a commission of 3% on the C.I.F. value of shipments with a minimum of commission per shipment of £50;

(b) interest rate in force for the appropriate currency used at the time of the plaintiffs' payment to Southern Equipment;

(c) to pay all bank, letter of credit charges, cable charges and petties, air mail postage local taxes etc.;

(d) to pay all sums financed and paid by the plaintiffs at the request of the company and on the company's behalf and all charges payable in accordance with the terms of the finance by unconditionally accepting on first presentation and payments thereon on due dates all bills of exchange drawn by the plaintiffs on the Southern Equipment in respect of the said payment made by the plaintiffs for and on behalf of Southern Equipment and other charges and sums payable.

The statement of claim further states that by a guarantee dated April 18, 1975 executed by the defendants and addressed to the plaintiffs, the defendants in consideration of the plaintiffs' agreeing to finance Southern Equipment in the course of its business jointly and severally undertook to pay the plaintiffs on demand *inter alia* all sums which may at any time become due from Southern Equipment to the plaintiffs including interests and the plaintiffs' usual charges in respect of all or any transactions between the plaintiffs and Southern Equipment; the plaintiffs duly financed Southern Equipment in its business transactions and drew 2 drafts on Southern Equipment payable to the Clydesdale Bank Ltd., the plaintiffs' collecting bank; the first draft dated June 2, 1975 was for US$46,491.62 with interest payable at 8.75% per annum from May 23, 1975 plus all charges and stamp duty; the second draft dated June 5, 1975 was for US$19,657.02 with interest payable at 8.75% per annum from June 3, 1975 plus all charges and stamp duty; both drafts were presented to and accepted by the company for payment on the respective due dates, November 9, 1975 and November 26, 1975; Southern Equipment has to date failed to settle both drafts totalling US$66,148.64 or the interest thereon or any part of the said sum or interest despite repeated demands.

The total sum claimed in Malaysian dollars is $149,533.36 equivalent to £28,478.75.

The plaintiffs have made demands on the defendants as guarantors for the payment of the sum.

Encik Chong, for the defendants, has urged in effect that there is a triable issue as the court would have to decide whether the whole transaction was a moneylending transaction caught by the Moneylenders Ordinance, 1951. He cites *Victor Kee Yong Poey* v. *Diners Club Malaya Sdn. Bhd.*[1] where it was held that the additional $600 charged as service charges to the sum of $18,000 was not to be treated as interest. From this, he says, it should be inferred that if the court had found the additional sum was interest, the decision would have been different. He then refers to paragraph 3 of the plaintiffs' affidavit of September 23, 1976 (enclosure 14A), where they state that by an agreement entered into between the plaintiffs and Southern Equipment, the plaintiffs agreed to grant confirming facilities to Southern Equipment in their purchase of goods and equipment from their suppliers. All this, he says, is nothing more but a cover for moneylending transaction and the plaintiffs are moneylenders caught by section 3 of the Moneylenders Ordinance, 1951 when they deal with people in this country and in any case there is nothing to show that the transaction would be lawful in England.

Encik Jegathesan, for the plaintiffs, argues that the original transaction took place in England, the confirming facilities provided to Southern Equipment were in Singapore, the two defendants are the directors; the Moneylenders Ordinance applies only to transactions in this country and it is not for the plaintiffs to show whether the transactions would have been illegal in England.

In dealing with this case, I think it is necessary to set down the relevant portion of the drafts as drawn by the plaintiffs and accepted by the defendants. It reads: "the payments were to be made on value received" (against shipment *per* s.s. Donna Terri, in the case of the first draft and *per* s.s. Kuantan in the case of the second draft) to Southern Equipment. It is not disputed that the plaintiffs were in fact acting as bankers for the Southern Equipment and making payments for them in advance for the purchase of goods by Southern Equipment in London. No money passed between the plaintiffs and Southern Equipment at the time of the transaction. The Moneylenders Ordinance clearly provides that it does not apply to a bank. To the charge by the defendants that the plaintiffs were doing illegal business having regard to the charge of interest, the plaintiffs have shown in their evidence that they are by Articles of Association authorised to deal in banking business.

It is a well known fact that even in this country business houses grant credit facilities subject to payment of interest on the price of goods, depending upon the nature of the goods purchased and the period during which payment for the goods purchased is to be made. As far as I can see the Moneylenders Ordinance relates only to pure money transactions. It is not intended to apply to interest charged for delayed payment of goods or to interest charged under an agreement by a business house which has made payment for the purchaser on goods taken by the purchaser from the vendor. The transactions between

the parties in the present case are akin to this. In fact the position of the plaintiffs is stronger because they are authorised to carry on business as bankers. I therefore find that there is no merit to the contention that the transactions were a guise for money-lending. There is little need for me to deal with other minor points that have been raised. I find that they too have no merits.

Appeal is dismissed with costs.

Order accordingly.

Solicitors: *John Ang & Co.; T.S. Chong & Co.*

TAN SWEE HOE CO. LTD. v. ALI HUSSAIN BROS.

[O.C.J. (Syed Othman F.J.) September 30, 1978]
[Johor Bahru — Civil Suit No. 228 of 1971]

Landlord and Tenant — Claim by landlords of vacant possession — Premises not controlled premises — Allegation that rent in arrears — Tenant alleging payment of tea-money — Whether equity created enabling tenant to occupy the premises for as long as he paid rent regularly — Maximum term ninety-nine years — National Land Code, s. 221.

The plaintiffs, the landlords of the premises, claimed vacant possession of the premises and alleged that the defendants, the tenants, were in arrears of rent. Notice to quit had been given. The premises were not rent controlled. The defendants alleged that they had paid the sum of $14,000 to the landlords and claimed that they were entitled to occupy the premises for as long as they wished on payment of rent regularly. They also alleged that the plaintiffs had refused to accept the arrears of rent. The learned trial judge found as a fact that the defendants had paid the sum of $14,000 to the plaintiffs.

Held: (1) as the defendants had paid tea-money to the plaintiffs, and as the payment was induced and encouraged by the plaintiffs in that the defendants would be allowed to remain in occupation for as long as they desired on payment of the monthly rent, an equity had been created and the defendants were entitled to occupy the premises for a term of years to be determined, provided they observed the conditions;

(2) the tenancy in this case was for the whole premises and the maximum period of the lease under section 221(3)(a) was 99 years;

(3) considering the equity that had been created and the differences between the parties over the current rent, which could easily be remedied, the notice by the plaintiffs terminating the tenancy was of no effect;

(4) in this case the correct monthly rent brought about by the increase in assessment was $293.40.

Cases referred to:-

(1) *Lee Ah Low* v. *Cheong Lep Keen & Anor.* [1970] 1 M.L.J. 7.

(2) *Yong Tong Hong v. Siew Soon Wah & Ors.* [1971] 2 M.L.J. 105.

(3) *Inwards* v. *Baker* [1965] 2 W.L.R. 212, 213.

CIVIL SUIT.

Thara Singh for the plaintiffs.

S.V.K. Singham for the defendants.

Cur. Adv. Vult.

Syed Othman F.J.: I must apologise for the delay in delivering this judgment. I have already informed counsel for both sides the reasons.

The plaintiffs claim vacant possession of a shop-house, No. 11, Jalan Dato Teoh Siew Khor, Kluang, arrears of rent, mesne profits and damages.

The statement of claim says that by an agreement dated October 1, 1967 the plaintiffs let to the defendants the shop-house on monthly tenancy at the rental of $254; the plaintiffs determined the tenancy by serving on the defendants a notice dated October 24, 1970 to quit the premises on November 30, 1970; the defendants have not vacated the premises; they are in arrears of rent from April 1970 to November 1970 at $254 per mensem, amounting to $2,032.

In defence, the defendants say that the plaintiffs had refused to accept the arrears of rent, and that in consideration of the defendants having paid the plaintiffs the sum of $14,000 on July 18, 1957, the plaintiffs granted the defendants tenancy of the premises for as long as the defendants wished on payment of rent regularly. By way of counterclaim, the defendants ask the plaintiffs be ordered to execute a valid registrable lease for the residue of the headlease less one day; alternatively the defendants seek payment by the plaintiffs the sum of $64,000 as damages for breach of contract.

It is common ground that the premises are not rent controlled.

At the commencement of the trial the parties agreed that there was a 1967 agreement as stated by the plaintiffs; and since the defendants relied on the 1957 agreement contending that the 1967 agreement was not valid, the general onus of proof shifts to the defendants and the defendants have the right to begin.

The main evidence for the defendants as given by DW1, a partner of the firm, is as follows: In 1957 DW1 asked Jamaluddin (DW2), a shop assistant, to look for vacant premises. Jamaluddin afterwards told him that the present premises would be let if tea-money of $14,000 was paid. He and two other partners saw Tan Thin Puan, the father of the representative of the plaintiffs in court, and a director of the company. Tan Thin Puan told him that the tea-money could not be reduced; that there could be no subletting without permission; other conditions would be imposed. After some negotiation, the $14,000 was paid. Tan Kim Seck, representative of the plaintiffs in court, who issued the receipt for the first month's rent told him that no receipt for the $14,000 could be issued, to save accounting to the Income Tax Department. DW2 was present when the tea-money was paid. Tan Thin Puan told them that they could stay on the premises as long as they wished. In 1961 the parties entered into a written agreement whereby the rent was increased from $200 to $220 per mensem. In 1967 they entered into another written agreement increasing rent from $220 to $254 per mensem. In substance all the written agreements are about the same. After the 1967 agreement there was dispute as to the correct rent. The solicitors for the plaintiffs as per letter, AB17, dated December 20, 1968 told the defendants in effect that as the assessment on the premises had been increased, the rent on the premises was increased by $10. The defendants did not agree to the increase; they pointed